

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

JESSICA E. SELLERS,

Plaintiff,

vs.

SOUTH CAROLINA AUTISM SOCIETY,  
INC., KIM THOMAS AND CRAIG C.  
STOXEN, AS CEO,

Defendants.

Civil Action No. 3:11-cv-02163-CMC

**DEFENDANTS' SUBMISSION IN  
RESPONSE TO TEXT ORDER [16]**

Defendants hereby provide this response to the Court's Text Order dated March 15, 2012 [16].

The United States Supreme Court has held that a Plaintiff cannot state a claim under 42 U.S.C. § 1981 ("Section 1981") unless there is a contract to be made or enforced. *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 479-480, 126 S.Ct. 1246 (2006).<sup>1</sup> The United States Supreme Court has never, to the knowledge of the undersigned, specifically held that an at will employment relationship is a "contract" upon which a Section 1981 claim be based. Indeed, *Domino's* involved written contracts to construct restaurants, not an at will employment situation.

It is acknowledged that the Fourth Circuit has found that at will employment may be "contractual" for purposes of stating a Section 1981 claim. *E.g., Spriggs v. Diamond Auto Glass*, 165 F.3d 1015, 1018-1019 (4<sup>th</sup> Cir. 1999). However, the undersigned notes that the Fourth Circuit's pronouncements on this issue came in cases arising in other states and discussing at-

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<sup>1</sup> Defendants do not deny that Section 1981 applies not only to the making of contracts but also to the enforcement of contract rights post-contract formation. 42 U.S.C. § 1981(b). Rather, they argue that the contract to be made or enforced must be something more than an at-will relationship of employment.

will and contract principles in those other such states, not South Carolina. For example, *Spriggs* arose in Maryland, and Maryland courts “recognize that at-will employment relationships are contracts.” *Id.* at 1018 (citation omitted). In contrast, courts in South Carolina have found that the at-will relationship is not contractual and thus does not support claims for breach of contract, tortious interference with contract, and the like. *E.g., Prescott v. Farmers Telephone Coop., Inc.*, 335 S.C. 330, 516 S.E.2d 923, 926 (S.C. 1999)(noting that in the at will relationship, even vague but repeated assurances of job security “do not give rise to contractual rights”); *Amason v. P.K. Management, LLC*, 2011 U.S. Dist. LEXIS 30883, at \* 6 (D.S.C. 2011)(“Since Plaintiff has failed to plead sufficient factual allegations establish the existence of an employment contract beyond the at-will relationship, Plaintiff’s claim of breach of contract accompanied by a fraudulent act fails at the outset”).<sup>2</sup>

To the extent this Court must give deference to the Fourth Circuit’s *Spriggs* decision and its progeny, although such cases are based on at will and contract principles of the laws of states other than South Carolina, the Defendants ask that this Court find that Plaintiff’s Section 1981 claim survives the Motion to Dismiss based only on the asserted “contract” of at will employment. In the Complaint, Plaintiff has failed to specify any other alleged contract upon which the Section 1981 claim can be based. Accordingly, the Defendants request that if the Court declines to dismiss the Section 1981 claim, that the Court at least specify that such claim survives at this juncture based only upon the asserted “contract” of at will employment and not some other alleged contract between any of the parties.

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<sup>2</sup> A copy of this opinion is attached as Exhibit A.

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March 19, 2012

